

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

SHANE MCCLANAHAN,

Petitioner,

vs.

JIM SALMONSEN and  
MONTANA STATE PRISON,

Respondents.

**CV-20-62-BU-BMM-JTJ**

**ORDER**

Petitioner Shane McClanahan (“McClanahan”), a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on November 24, 2020. (Doc. 1). United States Magistrate Judge John Johnston directed McClanahan to file an Amended Petition on the Court’s standard habeas form and/or a Complaint under 42 U.S.C. § 1983. (Doc. 3). Judge Johnston issued Findings and Recommendations in this matter on January 25, 2021. (Doc. 4).

Judge Johnston recommended that this Court dismiss McClanahan’s petition under Fed. R. Civ. P. 41(b) for failure to prosecute. (Doc. 4 at 5). Judge Johnston also recommended that this Court deny issuance of a certificate of appealability under Rule 11(a) of the Rules Governing § 2254 Proceedings, because

McClanahan has not yet made a substantial showing that he was deprived of a constitutional right under 28 U.S.C. § 2253(c)(2). (Doc. 4 at 4–5).

No party has filed objections to the Findings and Recommendations. The Court has reviewed Judge Johnston’s Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston’s Findings and Recommendations and adopts them in full.

### **ORDER**

Accordingly, **IT IS ORDERED:**

1. McClanahan’s Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED** under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. The Clerk of Court is directed to enter a separate judgment of dismissal in favor of Respondents and against McClanahan.
3. A certificate of appealability is **DENIED**.

Dated this 23rd day of February, 2021.

A handwritten signature in blue ink that reads "Brian Morris".

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Brian Morris, Chief District Judge  
United States District Court